EXPLANATION OF DRAFT OF PROPOSED BILL TO AMEND THE FEDERAL FIREARMS ACT

The draft of the proposed bill was prepared by the Treasury Department in cooperation with the Department of Justice to formulate strengthening amendments to the Federal Firearms Act which could be advanced as legislative proposals of the Treasury Department and the Department of Justice or of the Administration.

In preparing the draft, consideration has been given to the provisions of the more than twenty bills introduced in the 88th Congress, which proposed the enactment of amendments to the Federal Firearms Act designed to provide stricter federal control over interstate or foreign commerce in firearms, and to the views expressed in the reports to the appropriate committees of the Congress by the Treasury Department, the Department of Justice, and other executive agencies, concerning such bills.

The proposed draft takes the approach recommended by the Department of Justice in the report of that Department to the Senate Committee on Commerce on S. 1975 (88th Cong.) and supported by the Treasury Department in the report to the Committee on Ways and Means on H.R. 9471 (88th Cong.). In general, it would be made illegal to transport, ship, or receive firearms in interstate or foreign commerce, except as between licensed importers, manufacturers, or dealers, or between such licensees and persons excepted from the application of the Federal Firearms Act by section 4 of that Act (e.g., agencies of federal and state governments, etc.). Basically, the draft would adhere to the principle inherent in the present Act that the Federal Government regulates interstate and foreign traffic in firearms under its commerce power, and leaves control over intrastate traffic in ordinary firearms to the states under their police power.

Under the draft bill the so-called interstate mail-order traffic in firearms, whereby an individual can order a gun to be shipped from a mail-order dealer in another state, would be completely terminated and other than for sporting type firearms (such as shotguns and rifles) licensed importers, manufacturers, and dealers would be barred from selling firearms to residents of states other than the state in which the licensee's place of business is located. Further, all sales of

firearms by licensed importers, manufacturers, and dealers to persons under 18 years of age or to persons convicted of a felony would be prohibited.

The proposed draft also is designed to eliminate the serious abuses of the Federal Firearms Act license system inherent in the nominal license fee and weak qualifying requirement provisions of existing law, and to assure that persons licensed under the Act are bona fidely engaged in the business and are of good repute.

The proposed draft would also implement the recommendations of the Treasury Department, to the Dodd Committee (Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary of the Senate) and to the Commerce Committee of the Senate at the public hearings conducted by these committees, that the flood of imports of surplus military weapons and cheap foreign-made firearms, which are merchandised primarily through "mail-order" dealers, be brought under control.

Another principal feature of the proposed bill would bring under strict federal control interstate and foreign commerce in large caliber weapons such as bazookas, mortars, antitank guns, etc., and destructive devices such as explosive or incendiary (a) grenades or (b) bombs or (c) missiles or (d) rockets or (e) similar weapons.

Detailed Explanation

Section 1 of the draft bill:

This section would restate and amend section 1 of the Federal Firearms Act (52 Stat. 1250) which contains the definitions of the meaning of certain terms used in the Act.

The definition of the term "person" in paragraph (1) is existing law (15 U.S.C. 901(1)).

The definition of the term "interstate or foreign commerce" is a restatement of existing law (15 U.S.C. 901(a)). "Territory" is omitted since there is no "Territory" at the present time.

The last sentence of this definition is inserted to clarify the status of the Act in Puerto Rico, the Virgin Islands, and the District of Columbia.

The definition of the term "firearm" in paragraph (3) is a restatement and revision of the provision of existing law (15 U.S.C. 901(3)). The revised definition has been extended to include any weapon by whatsoever name known "which will," or "which may be readily converted to," expel a projectile or projectiles by the action of an explosive. This represents a much needed clarification and strengthening of existing law designed to prevent circumvention of the purposes of the Act. As under existing law, the definition also includes weapons "designed to" expel a projectile or projectiles by the action of an explosive, and firearm mufflers and firearm silencers.

The present definition of this term includes "any part or parts" of a firearm. It has been impractical to treat each small part of a firearm as if it were a weapon. The revised definition substitutes the words "frame or receiver" for the words "any part or parts."

In addition, the definition of the term "firearm" is extended to include any "destructive device" as defined in the proposed new definition of this term contained in paragraph (4) of section 1. The effect of this inclusion is to make the provisions of the Act applicable to such destructive devices.

The definition of the term "destructive device" contained in paragraph (4) is a new provision. The purpose of this definition is twofold. First, it would bring under the terms of the Act any explosive or incendiary (a) grenade or (b) bomb or (c) rocket or (d) missile or (e) similar weapon, or launching device therefor (except devices which are not designed or redesigned or used or intended for use as a weapon. Second, the definition would include large caliber weapons such as bazookas, mortars, antitank guns, etc., in order that the more stringent controls applicable with respect to the traffic in destructive devices would be applicable with respect to such weapons.

The parenthetical exception contained in this definition is drafted in the same manner as the exceptions contained in 26 U.S.C. section 5179(a) (relating to registration of stills)

and section 5205(a)(2) (relating to stamps on containers of distilled spirits). Therefore, the decisions of the courts (Queen v. United States, 77 F.2d 780; cert. den. 295 U.S. 755; and Scherr v. United States, 305 U.S. 251) to the effect that the Government is not required to allege or prove matter contained in an exception, would be applicable. Establishment by a person that he came within the exception would be a matter of affirmative defense. Thus, an explosive device shown to be designed and intended for lawful use in construction or for other industrial purposes would be excepted. However, if the device were designed or used or intended for use, as a weapon, it would be subject to the provisions of the Act.

A provision has been made in this definition that the Secretary may by regulation exclude from the definition any device which he finds is not likely to be used as a weapon, and which is shown to serve a necessary or useful purpose. Examples of devices which may be excluded by regulation from this definition are devices such as very pistols and other signaling devices and line-throwing appliances (required for commercial vessels by United States Coast Guard regulations) which may have been made from converted firearms. This provision also makes it possible to deal by regulations with any other comparable situation which may arise, such as old cannon or field pieces which are primarily of historical significance and with respect to which there is no reasonable likelihood that they will be used as a weapon.

The definition of the term "importer" contained in paragraph (5) is a new provision. Under existing law (15 U.S.C. 901(4)), the term "manufacturer" includes a person engaged in importation of firearms for purposes of sale or distribution. It appears obvious that separate classifications should be provided for importers and manufacturers in order to more appropriately effectuate the purposes of the Act.

The definition of the term "manufacturer" contained in paragraph (6) is a restatement of existing law (15 U.S.C. 901(4)) except that the references to importation have been deleted. Also, the reference to "ammunition or cartridge cases, primers, bullets, or propellant powder" has been deleted from this definition. This omission reflects the proposed elimination of ammunition from coverage of the Act. Ammunition is not serially numbered and is very hard to identify. These

factors make the provisions of the Act relating to ammunition impractical to administer. Further, no instance is known where any provision relating to ammunition has been helpful in controlling the interstate flow of firearms or in law enforcement.

The definition of the term "dealer" in paragraph (7) is a restatement of existing law (15 U.S.C. 901(5)) with certain revisions. References to ammunition have been deleted therefrom for the reasons stated in discussion of the definition of "manufacturer." The definition also makes it clear that "pawnbrokers" are a type of dealers. This reflects proposed changes in other provisions of the Act, which would place pawnbrokers handling firearms in a special category and provide for higher license fees for procurement of licenses by pawnbroker dealers.

The definition of the term "pawnbroker" in paragraph (8) is a new provision. Pawnbroker dealers are covered under the provisions of the existing Act in the same manner as other dealers. The purpose of this definition is to provide a basis for a separate classification of pawnbroker dealers. Under the provisions of the National Firearms Act (26 U.S.C. Chapter 53), pawnbrokers are separately classified and charged a higher rate of special (occupational) tax than other dealers.

The definition of the term "indictment" contained in paragraph (9) is a new provision. Inasmuch as a person under indictment for certain crimes is proscribed from shipping or receiving firearms in interstate or foreign commerce, and a license under the Act will not be issued to such a person, the definition will serve a useful purpose in making it clear that an "information" charging a crime is the same as an indictment charging a crime. This definition is in accord with the opinion of the court in Quinones v. United States, 161 F.2d 79.

The definition of the term "fugitive from justice" is a restatement of existing law (15 U.S.C. 901(6)) with the reference to "Territory" omitted since there is at the present time no such "Territory."

The definition of the term "crime punishable by imprisonment for term exceeding one year" is a new provision.

Prior to October 4, 1961, the Federal Firearms Act included provisions which made it unlawful for a person convicted of a crime of violence (as defined) in any court of the United States, the several States, Territories, possessions, or the District of Columbia, to transport, ship, or receive any firearm in interstate or foreign commerce. S. 1750 (87th Congress, 1st Session) amended the Act by striking the definition of "crime of violence" and by striking that term wherever it appeared in the Act and inserting in lieu thereof the term "crime punishable by imprisonment for a term exceeding one year." S. 1750 was introduced at the request of the Attorney General as an integral part of an anticrime legislative program. See House Report 1202, 87th Congress, 1st Session. The felony criteria for prohibiting the transporting, shipping, or receiving of firearms incorporated in the Act by S. 1750 has been retained to date.

However, the definition of "crime punishable by imprisonment for a term exceeding one year" proposed in the bill would modify the felony criteria by excluding antitrust-type violations. It may be noted that antitrust-type violations are not felonies under Federal law. However, a limited number of states have statutes making such offenses felonies. The definition would provide uniform treatment of such offenses, both State and Federal.

The definition of the term "Secretary" or "Secretary of the Treasury" contained in paragraph (12) is a new provision. The purpose of this definition is to eliminate the necessity of repeating "Secretary of the Treasury or his delegate" in several sections of the Act.

The definition of the term "ammunition" contained in existing law (15 U.S.C. 901(7)) is omitted since the Act as it is proposed to be revised would not cover ammunition.

Section 2 of the draft bill:

Section 2 of the draft bill would amend section 2 of the Federal Firearms Act (15 U.S.C. 902), which relates to prohibited acts pertaining to the transporting, shipping or receiving of firearms in interstate or foreign commerce.

Subsection (a):

Subsection (a) is derived in part from the provisions of existing law contained in subsections (a) and (b) of section 2 of the Federal Firearms Act (15 U.S.C. 902(a) and (b)). Such provisions of existing law make it unlawful for any importer, manufacturer, or dealer, except an importer, manufacturer, or dealer licensed under the Act, to transport, ship, or receive any firearm in interstate or foreign commerce, or for any person to receive any firearm transported or shipped in interstate or foreign commerce, by an unlicensed importer, manufacturer, or dealer.

The general substance of the provisions of this subsection of the draft bill reflects the recommendation of the Department of Justice (contained in report of that Department dated December 3, 1963, to the Committee on Commerce on S. 1975, 88th Congress, 1st Session) that the Federal Firearms Act "be amended to make it illegal to transport, ship, or receive firearms in interstate or foreign commerce, except as between licensed dealers or manufacturers, or as between any such licensed dealer, manufacturer, and any person excepted from the application of the Federal Firearms Act by Section 4 of that Act."

The Treasury Department, in reporting to the Committee on Ways and Means on H.R. 9471, 88th Congress, 1st Session, stated that the Department looked with favor on the provisions of the bill which would prohibit "commercial interstate traffic in firearms except between licensed dealers and manufacturers."

The provisions of section 2(a) of the draft bill establish a general rule making it unlawful for any person, except an importer, manufacturer, or dealer licensed under the provisions of this Act, to transport, ship, or receive firearms in interstate or foreign commerce. This would have the effect of channeling interstate and foreign commerce in firearms through licensed importers, licensed manufacturers, and licensed dealers thereby prohibiting the so-called "mail-order" traffic in firearms to unlicensed persons. Thus, the several States could adequately deal with the sale and disposition of firearms within their own jurisdiction by the exercise of their police power granted to them under the Constitution.

The provisions of this subsection would not, of course, be applicable in respect of transactions with the persons excepted under the provisions of section 4 of the Act (15 U.S.C. 904), such as federal or state agencies, etc. No specific exception is made in this section for the transactions with such persons, since such transactions are covered by section 4.

However, five specific exceptions are made to the general prohibitory provisions of subsection (a). These exceptions deal (1) with the transporting of certain types of firearms by individuals traveling in interstate or foreign commerce, (2) with the shipment of firearms to licensees under the Act for authorized service and the return of such firearm to the sender, (3) with the transportation of firearms by carriers, and (4) with the application of the subsection in the District of Columbia and the possessions.

Exception (1) makes it possible for a person who is traveling in interstate or foreign commerce to carry with him his shotgun or rifle (other than a sawed-off shotgun or short-barreled rifle which is subject to the provisions of the National Firearms Act). The exception also makes it possible for an individual traveling in interstate or foreign commerce (such as a person moving his place of residence) to have his shotgun or rifle transported for him under such conditions as the Secretary shall by regulations prescribe. However, the transportation of the firearms by or for the individual must be for a lawful purpose.

The second exception, which is contained in paragraph (2) relates to the transporting of a pistol or revolver by an individual traveling in interstate or foreign commerce and to having the pistol or revolver transported for such an individual. The limitations with respect to the transportation of pistols and revolvers are much more restrictive than with respect to the transportation of shotguns or rifles. The reasons for the more stringent limitations are threefold. First, the states, possessions, and the District of Columbia in general have, under their police power, imposed more restrictions on the acquiring, possessing, or carrying of concealable weapons than have been imposed with respect to sporting-type firearms, such as shotguns and rifles. Second, the problem of crime and juvenile delinquency involved in the firearms traffic primarily concerns concealable weapons (as is shown by the statistics with regard

to the District of Columbia, quoted by the Honorable David C. Acheson, United States Attorney for the District of Columbia, in his article in the Washington Post of January 10, 1965). Third, the more restrictive limitations are also correlated to the provisions of subsection (b) of section 2 as contained in the draft bill, which would prohibit licensed importers, manufacturers, and dealers from selling a pistol or revolver to a person who is a non-resident of the state in which the licensee's place of business is located.

The effect of the provisions of paragraph (2) of this subsection, coupled with the provisions of subsection (b) of this section, is to require a person to procure his pistol or revolver in the state in which he resides, and if he transports the pistol or revolver across a State line, to comply with the law of each State into or through which he transports such pistol or revolver. Such provisions are designed to give meaning and effect to the laws of those States which have imposed requirements for the protection of their citizens with regard to the acquiring, possessing, or carrying of such firearms.

The third exception, contained in paragraph (3) of subsection (a) provides that, subject to such conditions as the Secretary shall by regulations prescribe, a person may ship a firearm to a licensed importer, licensed manufacturer, or licensed dealer for authorized service and for the return of such firearm to the sender. However, it should be noted that this exception does not apply to destructive devices as defined in section 1(4) of the draft bill or to gangster-type firearms which are subject to the provisions of the National Firearms Act. Such firearms can only be transported in interstate or foreign commerce between persons licensed under the Act.

Paragraph (4) of this subsection provides an exception for the shipping or transportation of a firearm in interstate or foreign commerce by common or contract carrier between persons licensed under the Act, and to and from licensees and persons exempted by section 4 of the Act. This exception also recognizes lawful shipments by United States mail between persons licensed under the Act. Further, the exception recognizes transportation to or from non-licensees pursuant to regulations prescribed under paragraphs (1), (2), and (3) of this subsection.

The provisions of paragraph (5) of subsection (a) provide that nothing in this subsection shall be construed as applying in any manner in the District of Columbia or any possession differently than it would apply if the District of Columbia or the possession were a state of the United States. This provision is intended to make it clear that the prohibitions of the subsection are not intended, by reason of the definition of the term "interstate or foreign commerce," to apply to over-the-counter sales, or transportation within the District of Columbia or a possession. The decisions of the courts (Queen v. United States, 77 F.2d 780, cert. den. 295 U.S. 755; and Scherr v. United States, 305 U.S. 251) to the effect that the Government is not required to allege or prove matter contained in an exception, would be applicable to the exceptions contained in this subsection. Establishment by a person that he came within the exception would be a matter of affirmative defense.

Subsection (b):

Subsection (b) of section 2 of the Act, as contained in the draft bill, is a new provision which is intended to regulate the disposition of firearms by licensed importers, manufacturers and dealers, to persons other than licensees under the Act. The subsection would make it unlawful for any importer, manufacturer, or dealer to sell or otherwise dispose of any firearm without satisfactorily ascertaining (in such a manner as the Secretary shall by regulations prescribe) the true identity and place of residence (or of business in the case of a corporation or other business entity) of the purchaser, or knowingly to sell any firearm to a person under 18 years of age or (except for a rifle or shotgun) to a resident of any state other than that in which the importer's, manufacturer's, or dealer's place of business is located.

In order for the records of disposition required to be kept by licensees to have significant value or validity, it is essential that the licensees be required to satisfactorily ascertain the identity of the purchaser and his place of residence. It should be noted in this regard that the rifle used by Lee Harvey Oswald to assassinate the late President John F. Kennedy, and the pistol used to kill the police officer, were procured by Oswald from federally licensed dealers, under a fictitious name.

The provisions of the subsection prohibiting licensees under the Act from knowingly selling a firearm to a person under 18 years of age, would provide an effective and uniform means, throughout the United States, for preventing the purchasing of firearms by juveniles. Testimony before the Subcommittee to Investigate Juvenile Delinquency of the Committee of the Judiciary of the Senate, at the hearings in 1963 strongly indicated that a provision of this nature would be the most effective means of controlling the problem which Senator Dodd, Chairman of the Subcommittee, described as "alarming and distressing."

The provisions of the subsection prohibiting licensees under the Act from selling a firearm (other than a shotgun or rifle) to an unlicensed individual who is a resident of a state other than that in which the importer's, manufacturer's, or dealer's place of business is located, is intended to deal with the very serious problem of individuals going across state lines to procure firearms which they could not lawfully procure or possess in their own state and without the knowledge of their local authorities.

The Treasury Department, in the report to the Chairman of the Committee on Ways and Means, on H.R. 9471, 88th Congress, 1st Session, stated that:

> "The hearings before the Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary demonstrated the ease with which residents of a particular state, which has laws regulating the purchase of firearms, can circumvent such laws by procuring a firearm in a neighboring jurisdiction which has no such controls on the purchase of firearms."

The conditions imposed by this subsection on the operations of persons licensed under the Act to transport, ship, or receive firearms in interstate or foreign commerce, are deemed to be reasonable conditions on the privilege granted to them to engage in such commerce, and necessary to effective control of interstate and foreign commerce in firearms.

Subsection (c):

Subsection (c) of section 2 of the draft bill is a new provision which, like subsection (b), deals with the activities

of licensed importers, licensed manufacturers, and licensed dealers. This subsection would make it unlawful for any such importer, manufacturer, or dealer to sell or otherwise dispose of any firearm received in interstate or foreign commerce to any person, knowing or having reasonable cause to believe, that such person is under indictment or has been convicted in any court of the United States, the several states, possessions, or the District of Columbia, of a crime punishable by imprisonment for a term exceeding one year, or who is a fugitive from justice. In other words, licensees would be prohibited from knowingly disposing of firearms to felons, fugitives from justice, or persons under indictment for a felony. This would appear to be an entirely reasonable condition to be placed upon the operations of licensees under the Act.

Subsection (d):

Subsection 2(d) of the draft bill is existing law (15 U.S.C. 902(e)) except that the reference to "ammunition" has been deleted, consistent with the proposed deletion of "ammunition" from the coverage of the Act.

Subsection (e):

Subsection 2(e) of the draft bill is a restatement of existing law (15 U.S.C. 902(f)) revised to include persons under indictment. The omission of these persons from existing law appears to have been an inadvertent omission since such persons are, under existing law (15 U.S.C. 902(e)), prohibited from shipping or transporting firearms in interstate or foreign commerce. Also, the presumption contained in existing law has been eliminated, since it was declared unconstitutional by the Supreme Court in Tot v. United States, 319 U.S. 463. The reference to "ammunition" in existing law has been deleted in this subsection of the draft bill, for the reasons previously stated.

Subsection (f):

Subsection (f) of section 2 as contained in the draft bill is a new provision which would make it unlawful for any person (including a licensee under the Act) knowingly to deposit, or cause to be deposited for mailing, or delivery by mail, or knowingly to deliver, or cause to be delivered, to any common or contract carrier for transportation or shipment in interstate or foreign commerce, any package or other

container in which there is any firearm, without written notice to the Postmaster General or his delegate or to the carrier (as the case may be) that a firearm is being transported or shipped. This provision is correlated to the provisions of section 2(g) of the Act as contained in the draft bill, which in general prohibits carriers from delivering, or causing to be delivered, in interstate or foreign commerce, any firearm to any person who does not exhibit or produce evidence of a license obtained under section 3 of the Act. Further, the testimony before the Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary disclosed the existence of a practice of surreptitiously shipping firearms, without notice or disclosure, to circumvent requirements of federal or state law.

Subsection (g):

Subsection 2(g) of the Act as contained in the draft bill is a new provision, which would in general make it unlawful for any common or contract carrier to deliver, or cause to be delivered, in interstate or foreign commerce, any firearm to any person who does not exhibit or produce evidence of a license obtained under section 3 of the Act, or who is exempt by section 4 from the provisions of the Act. As noted in the discussion of subsection 2(f) any person who delivers, or causes to be delivered to the common or contract carrier, any package or other container in which there is a firearm, is required to give written notice to the carrier that a firearm is being transported or shipped.

This provision is also correlated to the provisions of section 2(a) of the Act as contained in the draft bill, and is intended to aid in effectuating the provisions of that subsection, which are intended to channel interstate or foreign commerce in firearms to persons licensed under the Act.

Subsection (h):

Subsection (h) of section 2 as contained in the draft bill is existing law (15 U.S.C. 902(g)) and relates to the transportation or shipment of stolen firearms. The only change in these provisions is the deletion of "ammunition."

Subsection (i):

Subsection 2(i) as contained in the bill is a restatement of existing law (15 U.S.C. 902(h)). The reference to ammunition has been deleted from this provision, for reasons

previously stated, and the language has been revised to correspond with other comparable provisions of federal law pertaining to the receipt or sale of stolen property "moving as, or which is a part of, or which constitutes interstate or foreign commerce," (see 18 U.S.C. 2313 relating to sale or receipt of stolen vehicles). This change will make it clear that the provisions apply to stolen firearms transported in interstate or foreign commerce, after having been stolen, as well as to firearms stolen in the course of movement in interstate or foreign commerce.

Subsection (j):

Subsection 2(j) as contained in the draft bill is a restatement of existing law (15 U.S.C. 902(i)) relating to firearms from which the manufacturer's serial number has been removed, obliterated or altered. The restatement makes applicable the provisions of the subsection to an importer's serial number, as well as the manufacturer's, since importers and manufacturers are separately classified under the provisions of the draft bill. The restatement also deletes the words "and the possession of any such firearm shall be presumptive evidence that such firearm was being transported, shipped or received, as the case may be, by the possessor in violation of this Act" since the presumption is meaningless in view of the decision of the Supreme Court in Tot v. United States, 319 U.S. 463.

Subsection (k):

Subsection (k) of section 2 of the Act as contained in the draft bill is a new provision which would make it unlawful for any person to import or bring into the United States, or any possession thereof, any firearm for which a license to import, or bring into the United States, is required under section 3(e) of the Act unless such person has first obtained such a license, from the Secretary, as required in such section to so import or bring in such firearm. This provision is correlated to the proposed new provisions relating to importation of firearms contained in section 3(e).

Subsection (l):

Subsection (l) of section 2 of the Act as contained in the draft bill is a new provision, which would make it unlawful for any person to knowingly receive any firearm which has been imported or brought into the United States or any possession thereof in violation of the provisions of this Act. This subsection also is correlated to the proposed new provisions of section 3(e) of the Act relating to importation

Section 3 of the draft bill:

Section 3 of the draft bill would amend section 3 of the Federal Firearms Act (15 U.S.C. 903) which relates to licensing of importers, manufacturers, and dealers, and to record keeping by licensees.

The primary purpose of the revision of this section is to make the licensing provisions of the Federal Firearms Act meaningful and effective, and to eliminate the serious abuses of the licensing provisions of the Federal Firearms Act inherent in the nominal license fee and weak qualifying requirement provision of existing law.

To a substantial degree, the provisions of this section reflect the proposals made by the Treasury Department to the Dodd Committee (Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary of the Senate). However, as a result of further study and evaluation, certain new features designed to further strengthen the licensing provisions and to control importation of firearms have been added.

Subsection (a):

Subsection (a) of section 3 of the Act as contained in the draft bill is a restatement and revision of existing law (15 U.S.C. 903(a)).

Under existing law, an "importer" is required to obtain a license as a "manufacturer." The draft bill provides a separate classification for importers, and under subsection (a) an importer would be required to obtain a license as such.

Under existing law, the applicant, if a manufacturer or importer, paid a fee of $25 per annum, and if a dealer, a fee of $1.00 per annum. These fees are completely unrealistic, and in the case of dealers represent only a fraction of the cost of processing an application and issuing a license. Further, the information presented at the public hearings (held in 1963 by the Subcommittee to Investigate Juvenile Delinquency of the

Judiciary Committee of the Senate, and by the Commerce Committee of the Senate in 1963 and 1964 on S. 1975, 88th Congress, 1st Session) strongly indicated that a large percentage of the persons holding licenses as manufacturers or dealers under the Federal Firearms Act were not bona fidely engaged in business as such, but had, due to the nominal license fees, obtained the licenses for their own personal reasons (e.g., to obtain a discount on purchase of firearms, or to ship, or receive concealable weapons through the mails, or to circumvent state or local requirements).

There has been a great amount of publicity in the press and other news media concerning these nominal license fees, and the ease with which a Federal Firearms Act license may be obtained. (See for example, the article in Harper's Magazine, December 1964, by Carl Bakal, entitled "The Traffic in Guns - A Forgotten Lesson of the Assassination" wherein Mr. Bakal states, "To obtain a federal license, you merely fill out a simple form and send it with a dollar to the Internal Revenue Service. I got one myself on April 29, 1964 with no trouble at all, although I have never sold a gun.")

Under the provision of subsection (a) of section 3 of the Act, as contained in the draft bill, the license fees would be increased to a figure which would make it very unlikely that any person not bona fidely engaged in business as an importer, manufacturer, or dealer would attempt to obtain a Federal Firearms Act license. The increased license fees would be such as to not only cover the cost of processing an application and issuing the license, but would defray the cost of conducting the investigation contemplated by the provisions of section 3(c) of the Act as contained in the draft bill, to determine the qualifications of the applicant to engage in the business, and whether or not he would be likely to conduct his operations in compliance with the Act.

A separate classification and higher fees are provided in the case of a manufacturer or importer of, or a dealer in, "destructive devices" as defined in section 1(4) of the Act as contained in the proposed draft. Since "destructive devices" are not ordinary articles of commerce, it is anticipated that very few such licenses will be issued. The purpose of this separate classification and higher fee with respect to such devices is to make more effective the stringent controls imposed under the draft bill with regard thereto.

A separate license with a higher license fee is also provided for pawnbroker dealers. A "pawnbroker" is defined in section 1(8) of the draft bill. Higher fees for pawnbroker dealers were provided in most of the bills to amend the Federal Firearms Act, which were introduced in the 88th Congress. (See for example, S. 1975, and H.R. 9471.) Also, it may be noted that under the National Firearms Act (26 U.S.C. Chapter 53) pawnbroker dealers are charged a higher rate of occupational tax than other dealers.

The provision that applicants shall be required to pay a fee for obtaining their license "for each place of business" is merely a clarification of existing law, since existing law is now so construed (see 26 CFR Part 177.33).

The basic license fee of $100 per annum for a dealer in firearms is the same as proposed by Congressman Karsten's bill, H.R. 9471 (88th Congress, 1st Session). The fee of $250 per annum for pawnbroker dealers compares with the fee of $200 per annum proposed by H.R. 9471 and the fee of $500 for an importer or manufacturer compares with the fee of $300 per annum proposed in H.R. 9471.

Subsection (b):

Subsection (b) of section 3 as contained in the draft bill is a restatement and revision of the provisions of existing law (15 U.S.C. 903(b)). Existing law provides that upon payment of the prescribed fee the Secretary of the Treasury shall issue to such applicant a license which shall entitle the licensee to transport, ship or receive firearms in interstate or foreign commerce unless, and until the license is suspended or revoked in accordance with the provisions of the Act. It will be noted that there are no specific conditions on the issuance of a license other than the payment of the prescribed fee. However, in view of the proscriptions in section 2 of the Act against the shipment, transportation, or receipt in interstate or foreign commerce of firearms by a person who is a fugitive from justice, or who has been convicted of, or who is under indictment for, any offense punishable by imprisonment for a term exceeding one year, the Act has consistently been construed as precluding the issuance of licenses

to such persons since it would be illegal for them to engage in the transactions covered by the license. (See Title 26, Code of Federal Regulations, Part 177.) The revision of section 3(b) makes it clear that the privileges granted to the licensee are "subject to the provisions of this Act" and also that the application for the license may be denied under the conditions set forth in section 3(c) of the Act as contained in the draft bill.

Subsection (c):

Subsection (c) of section 3 of the Act as contained in the draft bill is basically a new provision, except to the extent that it sets forth the construction of existing law to the effect that a license will not be issued to a person who is prohibited from transporting, shipping, or receiving firearms in interstate or foreign commerce under the provisions of subsection (d) or (e) of section 2 of the Act (i.e., a person who has been convicted of, or who is under indictment for, a felony, or who is a fugitive from justice).

The existing provisions of the Federal Firearms Act, regarding the issuance of licenses, represent an anomaly to the general practice with regard to the issuance of licenses or permits, in that the Act contains no standards for the issuance or denial of a license, such as are contained in other comparable acts. (See 26 U.S.C. 5271(c) and 5712, and 27 U.S.C. 204(a)(2).)

Even though the Act has no specific statutory standards, the courts would have held that there would have been an implied standard had the terms of the Act provided any discretion to the Secretary with regard to the issuance of a license. (See Ma-King Co. v. Blair, 271 U.S. 479, where the Supreme Court held that in the case of a statute which granted discretion, i.e., used the language "may issue" rather than "shall issue," that a license could be denied if there were reasonable grounds for believing that the applicant would not be likely to conduct his operations in conformity with federal law.)

Subsection (c) of section 3 of the Act as contained in the draft bill eliminates the anomalous situation with respect to the licensing system contained in existing law and sets forth the specific standards under which an application shall be disapproved and the license denied, after notice and opportunity for hearing.

The standards provided in subsection (c) are very similar to the standards provided in 26 U.S.C. section 5271(c) (relating to permits to procure, deal in, or use specially denatured distilled spirits); 26 U.S.C. 5712 (relating to permits for manufacturers of tobacco products); and to 27 U.S.C. 204 (relating to wholesale dealers in liquors, importers of liquors, etc.). It may be noted that the principal standard in all three of the statutes cited is the implied standard recognized by the Supreme Court in the Ma-King case (Ma-King v. Blair, 271 U.S. 479).

The hearing and appeal procedures provided by the Administrative Procedure Act (Act of June 11, 1946, 5 U.S.C. 1001 et seq.) would, as in the case of the permits provided for in 26 U.S.C. sections 5271 and 5712, be applicable with respect to license proceedings under the Federal Firearms Act.

The provisions of paragraph (2) relating to individuals possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association, are necessary to preclude felons or other individuals who could not obtain a license as an individual from using a corporation or other business organization to conduct their operations. In the past, individuals convicted of a felony have formed corporations for the purpose of continuing their firearms operations.

The provisions of paragraph (5) would preclude the issuance of licenses to applicants who do not have, or do not intend to have or maintain, bona fide business premises for the conduct of the business. This provision will be a definite aid in limiting licensees under the Federal Firearms Act to persons bona fidely engaged in business, and assuring that there will be an appropriate place that is subject to proper inspection where the required records will be maintained.

The information developed at the public hearings held by the Dodd Committee (Subcommittee to Investigate Juvenile Delinquency on the Judiciary Committee of the Senate) disclosed a definite need for such a provision. It was shown that in some cases importers or dealers maintained no regular place of business which could be found, and conducted their operations through post office boxes, mail drops, answering services, etc.

Subsection (d):

Subsection (d) of section 3 of the Act as contained in the draft bill replaces the provisions of existing law contained in section 3(c) of the Act (15 U.S.C. 903(c)) and reflects the construction of existing law as contained in current regulations (26 CFR 177).

The requirement of existing law, concerning the posting of a bond by a licensee convicted of a violation of the Act in order to continue operations pending final disposition of the case on appeal, serves no useful purpose, and has been omitted. Further, the provisions of this subsection have been revised to simplify administration. Since the licensee is required to reapply each year for a license, the information on the application relating to his indictment and/or conviction, will be adequate. Also, the license itself can, as at present, contain a warning that the licensee cannot continue operations once his conviction has become final.

As under existing law and regulations, a new license will not be issued to a person under indictment for, or who has been convicted of, an offense punishable by imprisonment for a term exceeding one year. However, the licensee may, under the terms of the Administrative Procedure Act, continue operations under his existing license, pending final action on a timely filed application for a new license. When the criminal case against the licensee has been finally disposed of, proper action will be taken to either issue or deny the new license, as the case may be.

Subsection (e):

Subsection (e) of section 3 of the Act as contained in the draft bill is a new provision designed to bring under control the flood of surplus military weapons and low-priced foreign-made firearms being imported or brought into the United States, under conditions which are clearly contrary to the public interest. A large percentage of these firearms are not suitable for target shooting, hunting, or any other sporting purpose. The testimony at the public hearings before the Dodd Committee made it abundantly clear that such firearms are (due to their very low cost) a principal source of supply of juvenile delinquents and certain other criminal elements.

The testimony before the Dodd Committee also indicated that many of these firearms were in such poor condition, or of such poor workmanship, that their use would be hazardous.

The operations of importers of and dealers in such firearms has reflected a flagrant disregard of the public interest.

Under the provisions of the subsection, any person desiring to import or bring a firearm into the United States or a possession thereof would, in addition to complying with all other applicable provisions of law, be required to obtain a license for the importation or bringing in of such firearm. Such a license would not be issued under the provisions of this subsection unless it was established to the satisfaction of the Secretary that certain conditions designed to protect the public interest had been met.

Applicants for licenses under the provisions of this subsection are required to pay a fee of $10 for each firearm licensed to be imported or brought into the United States.

and 1000 tools

The licensing provisions and the license fee are designed to bring this traffic, which has reached alarming proportions, under proper control.

Subsection (f):

Section 3(f) of the Act, as contained in the draft bill, is a new provision relating to the sale or other disposition of destructive devices by licensees to non-licensees. This provision is imposed as a condition on the privilege granted the licensee to engage in interstate or foreign commerce, with respect to such devices. Since these are not ordinary articles of commerce, it is not expected that there will be any significant volume of transactions falling within the application of the subsection. However, it is deemed to be in the public interest to place adequate controls over the disposition of these devices by licensees to non-licensed persons.

Subsection (g):

Subsection (g) of section 3 of the Act, as contained in the draft bill, is a restatement and revision of the record-keeping requirements of existing law (15 U.S.C. 903(d)). Under existing law and regulations (26 CFR 177.51), licensees are required to maintain complete and adequate records reflecting the importation, production, and disposition at wholesale and retail, of firearms, and the records are required to be kept available for inspection by internal revenue officers during regular business hours (26 CFR 177.54).

The restatement of the record-keeping requirements contained in this subsection would make clear in the statute the requirement that the records be made available for inspection at all reasonable times, and the authority of the Secretary or his delegate to enter during business hours the premises of the licensee for inspection purposes.

The subsection also makes clear the authority of the Secretary, by regulations, to require the submission of reports concerning the operations of licensees.

It has been existing practice to make available to state and local law enforcement officers information obtained from the required records of licensees for law enforcement purposes

(e.g., tracing the ownership of a firearm found at the scene of the crime). The subsection would provide specific statutory authority for this practice.

It may be noted that the entry and inspection provisions contained in this subsection are similar to those provided in 26 U.S.C. 5146 with regard to the premises of liquor dealers.

Subsection (h):

Subsection (h) of section 3 of the Act, as contained in the draft bill, is a new provision requiring the posting of a sign on the exterior, near the entrance, of the business premises, showing that the person is a licensed firearms importer, a licensed firearms manufacturer, or a licensed firearms dealer, as the case may be. The provision is similar to the provisions of 26 U.S.C. 5115(a), which requires every wholesale dealer in liquors to post a sign on the outside of his place of business, showing that he is engaged in such business. This provision will aid in identifying the premises subject to inspection, and also in assuring that the licensee is maintaining a business premise.

Subsection (i):

Subsection (i) of the Act, as contained in the draft bill, is a new provision. Existing law (15 U.S.C. 902(i)) makes it unlawful for any person to transport, ship, or knowingly receive in interstate or foreign commerce, any firearm from which the manufacturer's serial number has been removed, obliterated or altered. Under the statutory authority to prescribe regulations to carry out the provisions of the Act (15 U.S.C. 907), the Secretary has prescribed regulations requiring the identification of firearms (26 CFR 177.50). Subsection (i) would include in the Act specific statutory authority for the Secretary to require licensed importers and licensed manufacturers to identify firearms in the manner prescribed by regulations.

Subsection (j):

Subsection (j) of section 3 of the Act, as contained in the draft bill, is a new provision which would make applicable to the importation or bringing in of ammunition for a firearm, all of the provisions of the Act applicable with respect to the importation or bringing in of a firearm, except that in lieu of the license fee prescribed under paragraph (4) of subsection (e) of section 3 for the importation or bringing in of a firearm, the license fee would be $10 per lot of 1,000 rounds (or part thereof). This provision is intended to afford adequate controls over ammunition imported for the use of foreign-made firearms. This provision would seem to be particularly desirable with regard to ammunition for use in large caliber surplus military weapons. The provision would, of course, not apply to importations by, or for the use of, the United States or any agency thereof, of, by or for the use of a state or any agency thereof, by reason of the exceptions contained in section 4 of the Act.

Section 4 of the draft bill:

Section 4 of the Act, as contained in the draft bill, is a restatement of existing law (15 U.S.C. 904). However, the section as contained in the draft eliminates certain of the exceptions in existing law.

Subsection (a):

Subsection (a) of section 4 of the Act, as contained in the draft bill, contains the exception in existing law (15 U.S.C. 904) applicable in respect to transportation, shipment, receipt, or importation of firearms imported for, or sold or shipped to, or issued for the use of (1) the United States or any department, independent establishment, or agency thereof, or (2) any State or possession, or the District of Columbia, or any department, independent establishment, agency, or any political subdivision thereof. Such transactions are completely exempt from all provisions of the Act.

The exemptions in existing law for certain nongovernmental activities have been omitted. Such omission does not mean that firearms cannot be shipped to, or procured by, the omitted persons. It merely means that the omitted persons will be required to obtain firearms from licensees and that the proper records of transactions must be maintained.

Subsection (b):

Subsection (b) of section 4 of the Act, as contained in the draft bill, is a clarifying restatement of existing law (15 U.S.C. 904). The reference to the "Secretary of War" has been changed to "Secretary of Defense or his delegate" and reference to "ammunition" has been deleted.

Section 5 of the draft bill:

No change has been made in subsection (a) of section 5 of the Act relating to penalties. However, subsection (b) of section 5 of the Act, as contained in the draft bill, is a restatement and revision of existing law (15 U.S.C. 905(b)). This subsection would extend the existing forfeiture provisions of the Federal Firearms Act, which provide for the forfeiture of firearms involved in violations of the Act, to cover firearms "involved in, or used or intended to be used in," violation of the Act or of certain provisions of Title 18 of the United States Code pertaining to threats to, or assaults on, law enforcement officers, members of the judiciary, the President, the Vice-President, etc.

Under existing law, firearms involved in violations of the Federal Firearms Act (15 U.S.C. 901, et seq.) or the National Firearms Act (26 U.S.C. Chapter 53) are subject to forfeiture. However, these provisions are inadequate to cover many cases involving firearms used in offenses against the laws of the United States pertaining to assaults on, or threats against, law enforcement officers and public officials. The reference to section 1751 of Title 18 of the United States Code is to a proposed section which relates to the assassination of the President.

The procedures applicable to seizure, forfeiture, and disposition would be the same as for firearms seized for violation of the Federal Firearms Act (i.e., the provisions of the Internal Revenue Code of 1954, applicable in respect of National Firearms Act firearms would apply).

The enactment of this provision is deemed to be clearly a matter in the national interest.

Section 6 of the draft bill:

Section 6 of the Act, as contained in the draft bill, provides that the amendments made by this Act shall become effective on the date of the enactment of the Act, except that the amendments made by section 3, to section 3(a) of the Federal Firearms Act would not apply to any importer, manufacturer, or dealer licensed under the Federal Firearms Act on the date of the enactment of the draft Act, until the expiration of a license held by such manufacturer, importer, or dealer on such date.

In effect, this would mean that a licensee would not have to obtain a new license until his existing license expired.

Section 7 of the draft bill:

Section 7 of the Federal Firearms Act, as contained in the draft bill, would add a new section 10 to the Act, which would provide that, "Nothing in this Act shall be construed as modifying or affecting the requirements of section 414 of the Mutual Security Act of 1954, as amended, with respect to the manufacture, exportation, and importation of arms, ammunition, and implements of war."

This provision is merely for the purpose of assuring that the Act will be so construed.